

Mailing Date: AUG 03 2011

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ADMINISTRATIVE LAW JUDGE
FOR
PENNSYLVANIA LIQUOR CONTROL BOARD

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2952X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-403595
v.	:	
	:	LID - 47363
MIDTOWN PIZZA OF MIDDLETOWN	:	
INC.	:	
442 E. MAIN ST.	:	
MIDDLETOWN, PA 17057-2725	:	
	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. R-AP-SS-17600	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: BALLARON
LICENSEE: STEVE C. NICHOLAS, ESQUIRE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 24, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against MIDTOWN PIZZA OF MIDDLETOWN, INC. (Licensee), License Number R-AP-SS-17600.

The citation charges Licensee with a violation of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)]. The charge is that Licensee, by its servants, agents or employees, issued checks or drafts dated October 9 and 13, 2009, in payment for purchases of malt or brewed beverages, when it had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

An evidentiary hearing was conducted on June 8, 2011 at the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on November 12, 2009 and completed it on November 12, 2009. (N.T. 6)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on November 14, 2009. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)
3. On October 9, 2009 Licensee issued a check for the purchase of beer from an importing distributor/distributor in the amount of \$561.65 which was dishonored due to insufficient funds (N.T. 6).
4. On October 13, 2009 Licensee issued another check for the purchase of beer from an importing distributor/distributor in the amount of \$443.18 which was dishonored due to insufficient funds (N.T. 6-7).

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since March 1, 2001, and has had three prior violations (Commonwealth Exhibit No. C-3):

Adjudication No. 04-1314. Fine \$150.00.

Issued worthless checks in payment for malt or brewed beverages. May 24, 2004.

Adjudication No. 05-1069X. Fine \$200.00.

Issued worthless checks in payment for malt or brewed beverages. March 14, 2005.

Adjudication No. 07-2954X. Fine \$250.00.

Issued worthless checks in payment for malt or brewed beverages. October 2 and 9, 2007.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

As Licensee has not had a violation of this nature in approximately four years, I impose a \$150.00 fine.

ORDER

THEREFORE, it is hereby ordered that Licensee MIDTOWN PIZZA OF MIDDLETOWN, INC., pay a fine of \$150.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

Jurisdiction is retained.

Dated this 28TH day of July, 2011.



Felix Thau, A.L.J.

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.

IF YOU WISH TO APPEAL THE DECISION ON THE ADMINISTRATIVE LAW JUDGE'S ORDER, THE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE MAILING DATE OF THE ORDER. PLEASE CONTACT CHIEF COUNSEL'S OFFICE AT 717-783-9454.

Detach here and submit stub with payment

The fine must be paid by Cashier's Check, Certified Check or Money Order. **Personal and business checks are not acceptable unless bank certified.** Make guaranteed check payable to the Commonwealth of Pennsylvania and mail to:

PLCB-Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661

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Midtown Pizza of Middletown, Inc.